

FILED

SEP 27 2019

Clerk, U S District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

PAMELA SOTO,

Plaintiff,

vs.

KEVIN MCALEENAN, Acting
Secretary, Department of Homeland
Security, Transportation Security
Administration,

Defendants.

CV 19-13-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on July 26th, 2019, concluding that Defendant's Fed. R. Civ. P. 12(b)(1) motion to dismiss should be granted and that this action should be dismissed for lack of subject matter jurisdiction. (Doc. 17.) To date, neither party has objected. See 28 U.S.C. § 636(b)(1)(C). Accordingly, this Court reviews Judge Lynch's Findings and Recommendation for clear error. See *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error is "significantly deferential" and exists if the Court is left with a "definite and firm

conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

The Court finds no clear error in Judge Lynch’s finding that the Aviation and Transportation Security Act at 49 U.S.C. § 791 *et seq.* (“ATSA”) precludes Plaintiff’s suit under the federal Rehabilitation Act. *See Field v. Napolitano*, 663 F.3d 505, 510 (1st Cir. 2011). Additionally, no clear error is discovered in Judge Lynch’s determination that the ATSA’s “notwithstanding” clauses render other general federal statutes, like the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (“ADEA”), inapplicable to Plaintiff. *See Conyers v. Merit Systems Protection Bd.*, 388 F.3d 1380, 1382 (Fed. Cir. 2004).

Therefore, because the ATSA supersedes both Plaintiff’s Rehabilitation Act claim and her ADEA claim, the Court finds no clear error in Judge Lynch’s finding that the Court lacks subject matter jurisdiction to adjudicate this matter.

Accordingly, IT IS ORDERED that:

(1) Judge Lynch’s Findings and Recommendation (Doc. 17) are ADOPTED IN FULL.

(2) This matter is DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction.

DATED this 27th day of September, 2019.



Dana L. Christensen, Chief Judge
United States District Court